



9110-04-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 165**

**[Docket Number USCG-2018-0286]**

**RIN 1625-AA00**

### **Safety Zone; Fireworks, Delaware River, Philadelphia, PA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone for multiple fireworks events launched in the vicinity of Penn's Landing, Philadelphia, Pennsylvania, for waters of the Delaware River, Philadelphia, PA. Establishment of this safety zone is necessary to enhance safety of life on navigable waters immediately prior to, during, and immediately after these fireworks events. During the enforcement periods, no vessel may enter in or transit this regulated area without approval from the Captain of the Port Delaware Bay or a designated representative.

**DATES:** This rule is effective from May 24, 2018 through May 27, 2018.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2018-0286 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Petty Officer Edmund Ofalt, U.S. Coast Guard, Sector Delaware Bay,

Waterways Management Division, Coast Guard; telephone (215) 271–4814, e-mail  
Edmund.J.Ofalt@uscg.mil.

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

### **II. Background Information and Regulatory History**

On March 1, 2018, the Coast Guard was notified of fireworks events planned for May 24, 25, 26, and 27, 2018. In response, on May 2, 2018, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Fireworks, Delaware River, Philadelphia, PA (83 FR 19189). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this fireworks display. During the comment period that ended May 9, 2018, we received no comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because the safety zone needs to be established prior to May 24, 2018.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The COTP Delaware Bay has determined that potential hazards associated with the fireworks to be used in fireworks displays from May 24 through May 27, 2018 will be a safety

concern for anyone within the area defined later in this document. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled event.

#### **IV. Discussion of Comments, Changes, and the Rule**

As noted above, we received no comments on our NPRM published May 2, 2018. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a safety zone on the Delaware River adjacent to Penns Landing in Philadelphia, PA, May 24, 2018, through May 27, 2018. The safety zone will be enforced from approximately 8 pm to 11 pm on nights on which fireworks are being displayed from a barge in the Delaware River. These fireworks displays may be held on May 24th, 25th, 26th, and 27th, or on only some of these dates. Notification of enforcement dates and times will be published in the Coast Guard District 5 Local Notice to Mariners and broadcast via Broadcast Notice to Mariners. The safety zone will include all navigable waters of Delaware River, adjacent to Penns Landing, Philadelphia, PA, bounded from shoreline to shoreline, bounded on the south by a line running east to west from points along the shoreline connecting at latitude 39°56'31.2"N., longitude 075°08'28.1"W.; thence westward to latitude 39°56'29".1N., longitude 075°07'56.5"W., and bounded on the north by the southern edge of the Benjamin Franklin Bridge where it crosses the Delaware River.

Access to this safety zone will be restricted during the specified enforcement dates and time periods. Vessels may not take on bunkers or conduct lightering operations inside the zone during times of enforcement. Only vessels or persons specifically

authorized by the COTP Delaware Bay or designated representative may enter or remain in the regulated area. Requests to enter or remain in the zone will be required to be submitted to the COTP Delaware Bay, or his designated representative via VHF-FM channel 16 or 217-271-4807. Vessels engaged in law enforcement, servicing of aids to navigation, and emergency response will be exempt from these requirements.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration and time of day of the safety zone. The proposed safety zone will impact waters affected by this rule on May 24, 25, 26, and 27, 2018 from 8 pm to 11 pm. During this time of day commercial and recreational traffic is normally low. Notifications of enforcement dates and times will be made to the maritime community via Broadcast Notice to Mariners and Local Notice to Mariners so that plans may be adjusted accordingly. Notifications will

be updated as necessary, to keep the maritime community informed of the status of the safety zone.

### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually

and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires

Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will only be enforced for a short duration and excludes vessels from entry into or remaining within a specified area on the Delaware River. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

**PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05-0286 to read as follows:

**§ 165.T05-0286 Safety Zone; Safety Zone; Fireworks, Delaware River, Philadelphia PA.**

(a) Location. The following area is a safety zone: All navigable waters of Delaware River, adjacent to Penn's Landing, Philadelphia, PA, bounded from shoreline to shoreline, bounded on the south by a line running east to west from points along the shoreline commencing at latitude 39°56'31.2"N., longitude 075°08'28.1"W.; thence westward to latitude 39°56'29".1N., longitude 075°07'56.5"W., and bounded on the north by the Benjamin Franklin Bridge where it crosses the Delaware River. These coordinates are based on the 1984 World Geodetic System (WGS 84).

(b) Definitions As used in this section, designated representative means a Coast Guard Patrol Commander, including a Coast Guard petty officer, warrant or commissioned officer on board a Coast Guard vessel or on board a federal, state, or local law enforcement vessel assisting the Captain of the Port, Delaware Bay in the



enforcement of the safety zone.

(c) Regulations. (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter or remain in the zone, contact the COTP or the COTP's representative via VHF-FM channel 16 or 215-271-4807. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(3) No vessel may take on bunkers or conduct lightering operations within the safety zone during its enforcement period(s).

(4) This section applies to all vessels except those engaged in law enforcement, aids to navigation servicing, and emergency response operations.

(d) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) Enforcement period. This zone will be enforced from approximately 8 pm to 11 pm on nights on which fireworks are being displayed from a barge beginning May 24 through May 27, 2018. Starting and ending times for the enforcement of the safety zone will be broadcast via Broadcast Notice to Mariners and published in the weekly Local Notice to Mariners.

Dated: May 18, 2018

Scott E. Anderson,  
Captain, U.S. Coast Guard,  
Captain of the Port Delaware Bay.  
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